guished because they contravene the carrier's public service duty.[14] But it is submitted that the courts are inconsistent in declaring the contracts between master and servant void, while at the same time upholding the Pullman employees' contracts. In both cases there is the same economic coercion, the same constant dependence for safety on the party seeking immunity, and the same financial burden on the workman. And it should make no difference that in the latter case the contract is with one person and the exemption in favor of another.

"JITNEY BUS" REGULATION. — The rapid rise of the automobile hack, or "jitney bus," has called forth a correspondingly widespread body of legislation, which is the more interesting because of the uniformity of its purpose and its treatment by the courts. Much of this is in the form of municipal ordinances licensing and otherwise regulating the conduct of the business. Though a city has no inherent power either to license or to tax an occupation,[1] that the necessary authority, at least with regard to this particular occupation, is within the delegated powers of most municipalities is sufficiently attested by the large number of such ordinances,[2] none of which seems as yet to have been disapproved by a court of record. The ultimate power of regulation, however, remains in the state, and an operator, though licensed under a valid municipal ordinance, remains subject to statutory control.[3] The normal mode of effecting such control is, by the very nature of the business, through the public service commissions of the various states. Yet in some states, oddly enough, it seems that the commissions have no jurisdiction over these conveyances,[4] while in others it is certain that no action has as yet been taken by the commissions.[5] On the other hand, a number of these bodies have assumed jurisdiction through a liberal interpretation

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[14] In New York Central R. Co. *v.* Lockwood, 17 Wall. (U. S.) 357, Bradley, J., says, at p. 378, "In regard to passengers the highest degree of carefulness and diligence is expressly exacted. . . . It is obvious, therefore, that if a carrier stipulated not to be bound by the exercise of care and diligence . . . he seeks to put off the essential duties of his employment."

[1] City of Chicago *v.* O'Brien, 268 Ill. 228, 109 N. E. 10; City of St. Louis *v.* Laughlin, 49 Mo. 559. See 3 MCQUILLIN, MUNICIPAL CORPORATIONS, § 987 (pp. 2194–5).

[2] An exhaustive digest of all ordinances on the subject in the principal cities, up to June 15, 1915, is found in THE UTILITIES MAGAZINE, vol. i, no. 1, p. 28 (July, 1915); reprinted in 46 ELECTRICAL RAILWAY JOURNAL, 314 (Aug. 21, 1915).

[3] Public Service Commission *v.* Booth, 155 N. Y. Supp. 568.

[4] Arkansas, California,* Florida, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri (*semble*), Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Oregon, Tennessee, Washington. (For the information in this and the following note, indebtedness to THE UTILITIES MAGAZINE, vol. i, no. 2, p. 23 (Nov., 1915), is acknowledged.)

* Opinion of Commission counsel. This has now been affirmed by a decision of the California Railroad Commission itself. Western Association of Short Line Railroads *v.* Hackett, P. U. R. 1915 F, 997 (Sept. 30, 1915). The jurisdiction in each case is a matter of local statute, of course.

[5] Connecticut, Idaho, Louisiana, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Vermont, Virginia, West Virginia.

of their previous statutory powers; [6] and several legislatures have placed the jurisdiction beyond all doubt by explicit enactment.[7] In one case the state action has taken the form of making the occupation a misdemeanor unless licensed by a municipality.[8]

These attempts to handle promptly what threatened to become a vexatious problem have met with the general approbation of the courts. In most instances little difficulty has been felt. Thus a city's authorized ordinance as to the licensing of "hackney carriages," couched in general terms, probably is sufficient to cover the case of jitney busses; [9] and no doubt a general grant of power to license similar modes of conveyance amply justifies a special ordinance for this case.[10] The imposition of such a license naturally involves a classifying of the property, for purposes of practical convenience; but this gives the courts little trouble,[11] the bases of the classification being readily apparent.[12]

A more popular phase of the problem has been the necessity of imposing some sort of responsibility for negligent injuries by the drivers. To this end the latter have in many localities been called upon to give a bond to answer in damages. The idea is not a new one. Where in its nature an occupation is apt to cause injury to others, such a bond has frequently been required.[13] And the jitneys present such an obviously proper case for an application of this principle that this requirement has been unhesitatingly indorsed.[14] The same feeling has evoked in some instances a further provision, calling for a period of training designed to insure the technical competence of the operator. To be sustained, a rule so limiting one's constitutional liberty of pursuit must be clearly reasonable.[15] However, the courts have not felt that in this case the line of reasonableness has thus far been overstepped.[16]

It must be admitted that the influence of the street railways seems apparent throughout the legislation on this subject. Thus the estab-

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[6] Arizona, *In re* Automobile Traffic on Auto Stage Lines, P. U. R. 1915 C, 945, decided by the Corporation Commission; District of Columbia, Public Utilities Commission, Case No. 1493; Georgia, Georgia R., etc. Co. *v.* Jitney Bus Co., P. U. R. 1015 C, 928, decided by the Railroad Commission; Illinois, Jacksonville R. Co. *v.* O'Donnell, P. U. R. 1915 C, 853, decided by the Public Utilities Commission; Maryland, *In re* Automobiles & Jitney Busses, P. U. R. 1915 C, 365, decided by the Public Service Commission.

[7] COLO. LAWS, 1915, ch. 133; N. Y. LAWS, 1915, ch. 667; R. I. PUB. LAWS, ch. 1263, sec. 4 (adopted Jan., 1915); WIS. LAWS, 1915, ch. 546.

[8] TENN. ACTS, 1915, ch. 60.

[9] State *v.* Jarvis, 95 Atl. 541 (Vt.).

[10] *Ex parte* Dickey, 85 S. E. 781 (W. Va.); Greene *v.* City of San Antonio, 178 S. W. 6 (Tex.); LeBlanc *v.* City of New Orleans, 70 So. 212 (La.); *Ex parte* Counts, 153 Pac. 93 (Nev.); *Ex parte* Sullivan, 178 S. W. 537 (Tex.).

[11] *Ex parte* Cardinal, 150 Pac. 348 (Cal.); Nolen *v.* Riechman, 225 Fed. 812; City of Memphis *v.* State, 179 S. W. 631 (Tenn.); Booth *v.* City of Dallas, 179 S. W. 301 (Tex.); *Ex parte* Dickey, *supra*, 85 S. E. 781 (W. Va.).

[12] That a classification based on definite criteria is unobjectionable, see Soon Hing *v.* Crowley, 113 U. S. 703; Oricut Insurance Co. *v.* Daggs, 172 U. S. 557, 562.

[13] Hawthorne *v.* People, 109 Ill. 302; Bell *v.* State, 28 Tex. App. 96, 12 S. W. 410.

[14] *Ex parte* Bogle, 179 S. W. 1193 (Tex.); *Ex parte* Cardinal, *supra*, 150 Pac. 348 (Cal.); City of Memphis *v.* State, *supra*, 179 S. W. 631 (Tenn.); Greene *v.* City of San Antonio, *supra*, 178 S. W. 6 (Tex.); State *v.* Howell, 147 Pac. 1159 (Wash.).

[15] See Smith *v.* State of Texas, 233 U. S. 630.

[16] *Ex parte* Cardinal, *supra*, 150 Pac. 348 (Cal.).

lishment of specified routes and termini for the jitneys, though no doubt a proper exercise of the police power,[17] tends directly to the benefit of the railways, in eliminating the jitney-drivers' practice of monopolizing and specializing upon the profitable short hauls. A limitation upon the fares to be charged is less clearly in the interest of the railways; but it is certainly quite within the police power.[18] Courts should, however, guard against upholding rates which, under the guise of regulation, are designed to be confiscatory.[19] In one recent case the railway has forsaken the rôle of public benefactor and has frankly sought relief by injunction as an injured individual where the jitneys were operating in violation of law.[20] Whether the mere infringement of a non-exclusive franchise affords ground for such relief is in some doubt on the authority, though by the better view an injunction will be given.[21] The court, however, in giving the injunction, took the additional ground that the jitneys, aside from their illegality,[22] were a public nuisance in fact, causing the plaintiff special damage. As a general rule, it is undisputed that an injunction may properly issue where these elements concur; [23] and impairment of general pecuniary condition is recognized as sufficient damage.[24] Nevertheless, in view of the fact that the diversion of trade from the plaintiff railway was due, not to the annoying character of the jitneys, but rather to their superior attractiveness to the public, as a means of transportation, it seems difficult to trace a proximate connection between the element of nuisance and the plaintiff's damage.

DOES THE FEDERAL EMPLOYERS' LIABILITY ACT SUPERSEDE STATE COMPENSATION LAWS AS TO INTERSTATE COMMERCE?— Since the case of *Gibbons* v. *Ogden* [1] there has been no room for doubt that the federal

[17] *Ex parte* Dickey, *supra*, 85 S. E. 781 (W. Va.).

[18] Munn *v.* Illinois, 94 U. S. 113.

[19] Philadelphia Jitney Ass'n *v.* Blankenburg, 72 Leg. Intell. 730 (Com. Pleas Ct. of Phila. Co., Pa., June, 1915), appears to give evidence of this tendency.

[20] Memphis St. Ry. Co. *v.* Rapid Transit Co., 179 S. W. 635 (Tenn.).

[21] The right on the part of a public utility operating under a non-exclusive franchise to an injunction against competition not publicly authorized, though in some dispute, seems generally conceded. Hudspeth *v.* Hall, 111 Ga. 510, 36 S. E. 770; Carroll *v.* Campbell, 108 Mo. 550, 17 S. W. 884; Cent. R. Co. *v.* Penn. R. Co., 31 N. J. Eq. 475, 493; Patterson *v.* Wollmann, 5 N. D. 608, 67 N. W. 1040; Bartlesville, etc. Power Co. *v.* Bartlesville, etc. Ry. Co., 26 Okl. 453, 109 Pac. 228; Douglass' Appeal, 118 Pa. 65, 12 Atl. 834. *Contra*, Empire City Subway Co. *v.* Broadway, etc. Co., 87 Hun (N. Y.) 279, 33 N. Y. Supp. 1055, affirmed in 159 N. Y. 555, 54 N. E. 1092. See McEwen *v.* Taylor, 4 Greene (Ia.) 532; New Eng. Ry. Co. *v.* Central Ry. & Electric Co., 69 Conn. 47, 36 Atl. 1061; Coffeyville, etc. Gas Co. *v.* Citizens National Gas, etc. Co., 55 Kan. 173, 40 Pac. 326.

[22] Acts sanctioned by legislative authority cannot constitute a nuisance, even though if unauthorized they might have amounted to one in fact. Murtha *v.* Lovewell, 166 Mass. 391, 44 N. E. 347; Davis *v.* Mayor, 14 N. Y. 506. The question whether lack of such authority, where required by law, is sufficient to render an otherwise proper act a nuisance, involves the more general problem of the purpose of the legislature; discussed in 27 HARV. L. REV. 317 *et seq.*

[23] 1 HIGH, INJUNCTIONS, 4 ed., § 762.

[24] Draper *v.* Mackey, 35 Ark. 497; Keystone Bridge Co. *v.* Summers, 13 W. Va. 476; Rose *v.* Groves, 12 L. J. C. P. 251.

[1] 9 Wheat. (U. S.) 1.